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REMARKS

Favorable reconsideration and allowance of the subject application are respectfully requested. Claims 2-12 and 14-24 are pending in the present application, with claims 15, 18 and 19 being independent.

Claim Rejections under 35 U.S.C. §103

The Examiner rejected: claims 8, 10, 15, 18, 19, 21, and 22 under 35 U.S.C. 103(a) as being unpatentable over *Peschmann* (US 5,367,552) in view of the admitted prior art and *Bilich et al.* (US 5,877,483); claims 2-4 under 35 U.S.C. 103(a) as being unpatentable over *Peschmann* as modified by the admitted prior art and *Bilich et al.* and further in view of *Davis et al.* (US 6,088,450); claims 5-7, 12, 16, 17, and 20 under 35 U.S.C. 103(a) as being unpatentable over *Peschmann* as modified by the admitted prior art and *Bilich et al.* and further in view of *Xydis* (US 6,070,240) and *Davis et al.*; claims 9, 11, 23, and 24 under 35 U.S.C. 103(a) as being unpatentable over *Peschmann* as modified by the admitted prior art and *Bilich et al.* and further in view of *Zancho* (US 5,814,798); and claim 14 under 35 U.S.C. 103(a) as being unpatentable over *Peschmann* as modified by the admitted prior art and *Bilich et al.*

in view of *Schmitt* (US 6,094,589). These rejections are respectfully traversed insofar as they pertain to the presently pending claims.

Peschmann is directed to an apparatus for detecting concealed objects that uses CT scanning to identify concealed objects with a density corresponding to the density of target objects such as explosives or drugs. *Bilich et al.* is directed to a method and a system for automatically and securely performing computer power up and logon functions in a personal computer (PC).

It appears that the Examiner is interpreting the background section of the present application too broadly. In other words, it appears that the Examiner is unfamiliar with the construction of operating fields of X-ray apparatus. Therefore, in an effort to provide a clear explanation and to further the prosecution of the present application, Applicant attaches hereto a description of conventional operating fields of Heimann as well as from InVision, which were downloaded from their respective websites. Applicants respectfully submit that these are current products of these companies and as such are conventional art.

It can be readily seen that the ProLine keyboard (page 3 of the Heimann Internet download) has **no** numerals/keys as provided by the computer keyboard of the prior art, e.g., *Bilich et al.*

Likewise, the keyboard of InVision also does not have numeric keys. The numeric code is entered via a key in the conventional art. This key is provided with a numeric code, by which the x-ray examining device can be identified, and later on the operator as well. The identification, however, is not done by the system itself, but in a later, manual verification, whereby the system is verified by the numeric code, whereas the system verifies the operator, who must have worked on the system according to a known schedule. In other words, the statistical individual data is gathered manually. This is all the information that one skilled in the art would know and conclude from the background section of the present application, e.g, Applicant's admitted prior art.

Thus, it is not obvious from *Peschmann* (which was filed in 1993), that the keyboard of *Peschmann* is constructed differently from the keyboard that InVision is still using to date. It can also not be deduced that the system described in *Peschmann* includes an identification device. In respect to the identification device, it does not seem to matter whether it is a Computed Tomography (CT) device for luggage inspection or a conventional device, since InVision's workstation is designed for such a CT device.

Billich, on the other hand, relates to a standard keyboard for a personal computer, which is not synonymous to the input devices

for an examining device.

As such, Applicant respectfully submits that the cited references do not contain any motivation to combine, and therefore a *prima facie* case of obviousness cannot be substantiated.

An essential evidentiary component of an obviousness rejection is a teaching or suggestion or motivation to combine the prior art references.¹ Combining prior art references without evidence of a suggestion, teaching or motivation simply takes the inventors' disclosure as a blueprint for piecing together the prior art to defeat patentability -- the essence of hindsight.² Evidence of a suggestion, teaching or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or in some cases, from the nature of the problem solved.³ However, a rejection cannot be predicated on the mere identification of individual components of the claimed limitations.⁴ Rather, particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention would have selected these components for combination in the manner claimed.⁵

Applicant respectfully submits that the Examiner has used

¹ see *C.R. Bard, Inc. v. M3 Systems, Inc.*, 48 USPQ2d 1225 (Fed. Cir. 1998).

² see *Interconnect Planning Corp. v. Feil*, 227 USPQ 543 (Fed. Cir. 1985).

³ see *In re Dembiczak*, 50 SPQ2d 1614 (Fed. Cir. 1999).

⁴ see *In re Kotzab*, 55 USPQ2d 1313 (Fed. Cir. 2000).

nothing more than hindsight in order to combine *Peschmann*, the admitted prior art, and *Bilich et al.*, and has identified nothing in either publication that could be construed as a suggestion, teaching or motivation to combine the prior art references. Thus, the Examiner's reference combination is improper and should be withdrawn for the following reasons.

The Examiner incorrectly alleges on page 3 of the outstanding Office Action that "it would have been obvious to one of ordinary skill in the art...to include...the apparatus as taught by *Peschmann*...[with]...the X-ray examining apparatus [of the admitted prior art]...in order to identify an operator of the apparatus, thereby improving security." *Peschmann*, however, contains absolutely no teaching or suggestion of an identification system and therefore, one skilled in the art would not look toward the admitted prior art in order to make up for the deficiencies of *Peschmann*. In other words, The Examiner's combination of *Peschmann* and the admitted prior art is a clear example of hindsight.

Furthermore, this conclusionary statement made by the Examiner ("thereby improving security") is not a proper basis to substantiate an obviousness rejection. Recent Federal Circuit case law precedent makes it explicitly clear that the factual question

⁵ *Id.*

of motivation is material to patentability and cannot be resolved on subjective belief and unknown authority, but must be read on the objective evidence of the record. Federal Circuit case law precedent further requires that "common sense and common knowledge" alone is improper evidence in support of an obviousness rejection.

The Examiner purports a common sense and common knowledge reason for the deficiencies of *Peschmann*, in other words, stating that the admitted prior art would have suggested a similar technique. However, common sense and knowledge are not objective evidence of record, as the Federal Circuit explains, but are in fact commensurate with subjective belief and unknown authority. Therefore, the Examiner has failed to meet the legal requirements to substantiate the obviousness rejection.

For an illuminating discussion on the burden placed on an Examiner to establish objective factual findings of record, the Examiner is referred to the recent Federal Circuit decision of *In re Lee*, 61 USPQ2d 1430 (CAFC 2002).

In re Lee involved an appeal of a decision of the Board of Patent Appeals in which *Lee* argued that the Examiner failed to provide a source of a teaching, suggestion, or motivation to combine the applied prior art to arrive at the claimed invention. The Board responded to these arguments by ruling that "[t]he

conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint or suggestion in a particular reference." *Id.* at 1432. The Federal Circuit overturned the Board's decision "for failure to meet the adjudicative standards for review under the administrative procedure act." *Id.* at 1431. The Federal Circuit further stated that "the factual inquiry whether to combine references must be thorough and searching...it must be based on objective evidence of record...[t]his precedent has been reinforced in a myriad of decisions and cannot be dispensed with." *Id.* at 1433. The Court also stated that the USPTO is "not free to refuse to follow Circuit precedent" and "cannot rely on conclusionary statements when dealing with particular combinations of prior art and specific claims." *Id.* at 1434.

As stated herein above, the Examiner's asserted modification for *Peschmann*, which is to "improve security," and the lack of factual support thereof comports very closely to the analysis disapproved by the Federal Circuit in *In re Lee*. As such, the Examiner's failure to provide factual support for a teaching, suggestion or motivation to modify *Peschmann et al.* constitutes legal error.

Regarding *Bilich et al.*, the Examiner provides absolutely no

reasoning why one skilled in the art would look towards *Bilich et al.* in order to make up for the deficiencies of either the admitted prior art or *Peschmann*.

Applicant respectfully submits that *Bilich et al.* contains absolutely no teaching that the identification system of *Bilich et al.* is connected to an operating field to thereby operate a device other than a Personal Computer, much less an X-ray examining apparatus.

It appears that on page 5 of the Office Action that the Examiner is alleging that the feature of a counterpart device being integrated into the operating field, which operates the X-ray examining apparatus, is supposedly taught by *Bilich et al.* as the card reader 16 being coupled to the I/O device 17. This I/O 17 device of the Personal Computer 10 is, however, nothing more than, for example, a mouse or keyboard (see, for example, col. 4, lines 15-17 of *Bilich et al.*). Further, the I/O device 17 of *Bilich* is not coupled to any external devices, but is a component of the Personal Computer 10.

Bilich et al. teaches that a manufacturing facility has some type of access control system so that the employees utilize identification cards to gain access to those areas and that these identification cards can then be utilized for the card reader 16 to

gain access to the PC 10, see col. 3, lines 41-50. *Bilich et al.*, however, provides absolutely no teaching that the PC 10 is utilized to operate devices in such a manufacturing facility. Therefore, it should now be evident to the Examiner that there is absolutely no teaching or suggestion or motivation to combine the prior art references. Once again, the Examiner has used hindsight in order to combine the references.

Furthermore, as repeatedly stated above, there is absolutely no motivation to combine *Peschmann* or the admitted prior art with *Bilich et al.*, as alleged by the Examiner, because *Bilich et al.* is also nonanalogous art.

"In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned."⁶ Furthermore, MPEP 2141.01(a) states that PTO classification is some evidence of "nonanalogy" or "analogy". See, for example, *Wang Laboratories, Inc. v. Toshiba Corp.*, 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993) (Patent claims were directed to single in-line memory modules (SIMMs) for installation on a printed circuit motherboard for use in personal computers. Reference to a SIMM for

⁶ see *In re Oetiker*, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992).

an industrial controller was not necessarily in the same field of endeavor as the claimed subject matter merely because it related to memories. Reference was found to be in a different field of endeavor because it involved memory circuits in which modules of varying sizes may be added or replaced, whereas the claimed invention involved compact modular memories).

Peschmann has a U.S. and International classification of 378/57 and G01N 23/04, respectively. *Bilich et al.* has U.S. and International classification of 235/382 and Ho4k 1/00, respectively. Therefore, because *Bilich et al.* is not even remotely in the field of Applicant's endeavor nor is it reasonably pertinent to the particular problem with which the inventor was concerned, one skilled in the art would not look towards *Bilich et al.* to make up for the deficiencies of *Peschmann* or the admitted prior art

In sum, because there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings, the Examiner has failed to discharge his burden in establishing a *prima facie* case of obviousness.

Accordingly, in view of the above discussion, Applicant respectfully requests that the Examiner withdraw each of the

rejections to claims 2-12 and 14-24.

Conclusion

In view of the above remarks, this application appears to be in condition for allowance and the Examiner is, therefore, requested to reexamine the application and pass the claims to issue.

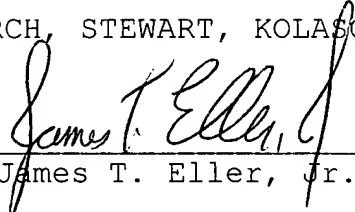
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Martin R. Geissler (Reg. No. 51,011) at the telephone number below, which is located in the Washington, DC area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By


James T. Eller, Jr., Reg.#39,538

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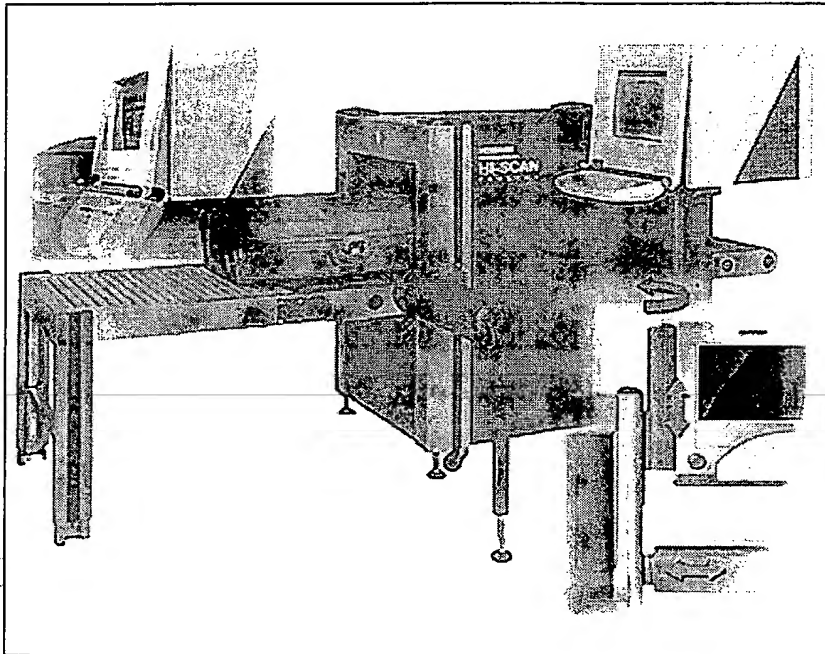
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ProLine System Components

Overview

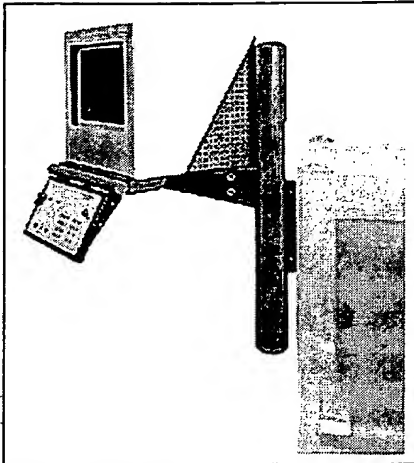
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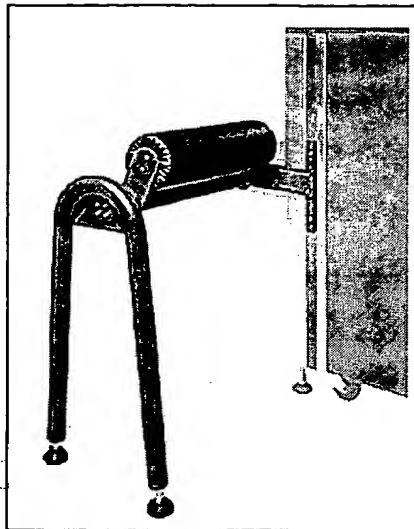
The innovative system concept ProLine applies new standards to X-ray inspection technology. The flexible modular system comprises all elements for space-saving installations of integrated security inspection areas. Superior in quality, function and aesthetics, the well-suited ProLine components can be combined with individual system solutions. The user-friendly design of the workplace directly influences the quality of security inspection.

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Google: *Proline + Heimann*



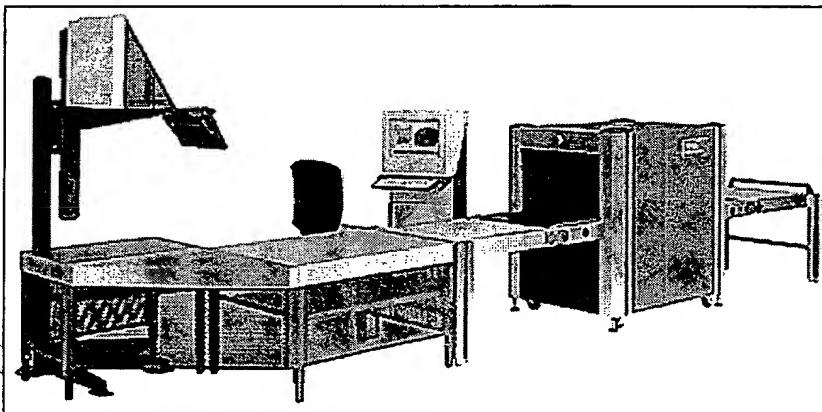
Monitor lifting pillar
to be operated in combination with an X-ray
inspection system or as a stand-alone
installation with a stationary base.



Operator's rest
for a back-supporting body posture
and space-saving control desk design.

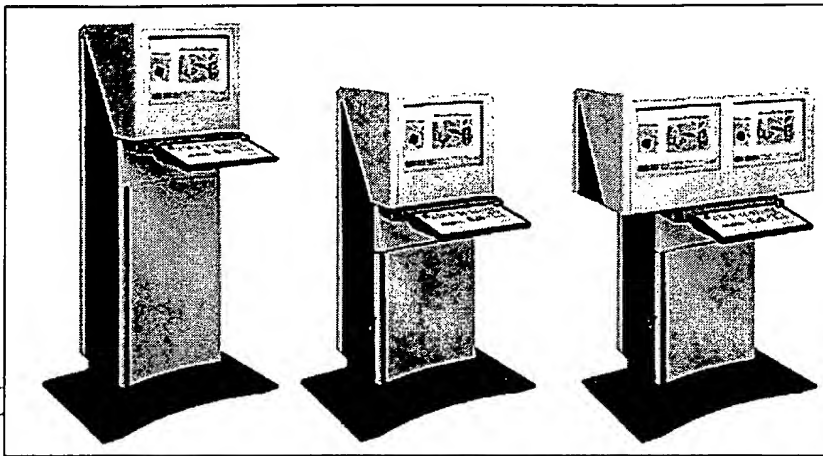
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The consideration of changing activities of the security personnel including workplace rotation requires new approaches to work place definitions. By means of the adjustable monitor support for fast, individual height adjustment of the operator workplace and the adjustable operator support for a back-supporting body posture ProLine offers ergonomically and logistically useful design varieties for inspection workplaces.



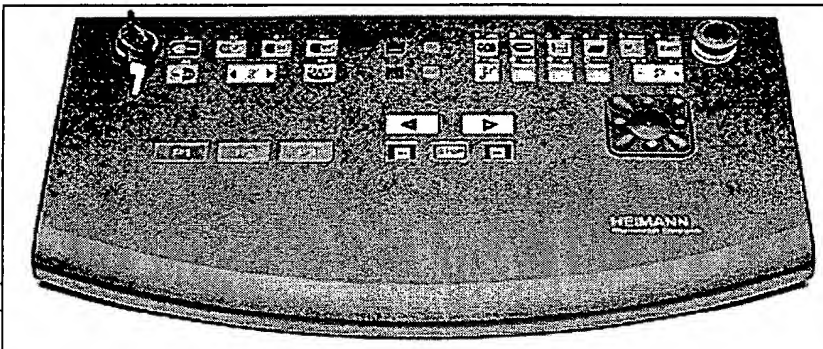
ProLine design of an X-ray inspection workplace

Top



ProLine operator control desks for one or two monitors respectively;
lockable lower cabinet; lockable keyboard closure.

Top



ProLine keyboard

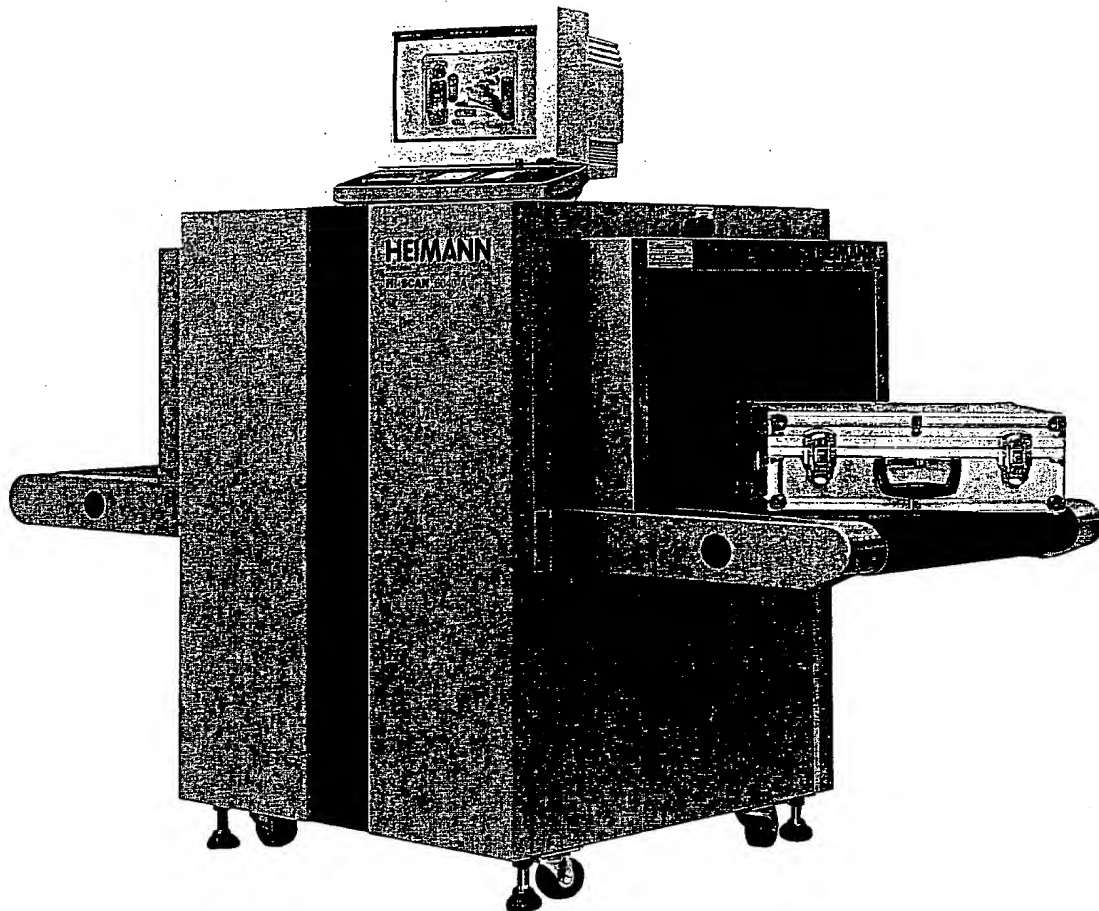
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HI-SCAN 6040-A ist eines der meistgekauften Röntgenprüfgeräte der Welt. Mit seiner Tunnelöffnung von 60 x 40 cm läßt es sich in idealer Weise zur Prüfung von Handgepäck einsetzen. So bewährt es sich bereits tausendfach auf Flughäfen, in der Industrie und bei Behörden, eignet sich aber auch für den Einsatz in anderen Bereichen mit erhöhtem Sicherheitsbedarf.

... modernste Technologie

Die hervorragende technische Ausstattung des Gerätes ermöglicht mit ihren diversen Bildauswertungsfunktionen maximale Prüfqualität bei minimaler Prüfzeit:

- ✓ Exzellente Bildqualität durch hohe Bildauflösung
- ✓ Materialdiskrimination zur Detektion von Sprengstoffen, Drogen u.a. (Option HI-MAT)
- ✓ Erneute Aufrufbarkeit des vorhergehenden Röntgenbildes mit allen Bildauswertungsfunktionen (Review)

- ✓ Durchdringung von bis zu 25 mm Stahl (Option Super Enhancement)
- ✓ Hochwertige Magnetbandaufzeichnung der Röntgenbilder, die sämtliche Bildauswertungsfunktionen ermöglicht (Option DIGI-REC)
- ✓ Anschlußmöglichkeit einer Nachkontrollstation
- ✓ Zufallsgesteuerte Einblendung von Waffen, Sprengvorrichtungen etc. in die Röntgenbilder zwecks Kontrolle und Schulung des Bedienpersonals (Option HI-TOP)
- ✓ Kein Strahlenrisiko für Personen oder die zu prüfenden Gegenstände

... Bediener-Training und erstklassigen Service

Die Bediener-Schulungen von Heimann Systems genießen weltweit einen hervorragenden Ruf und werden für jeden Kunden individuell durchgeführt.

Als einer der weltweit größten Hersteller von Röntgenprüfgeräten verfügt Heimann Systems über ein leistungsfähiges globales Service-Team, das Ihnen schnell und zuverlässig zur Verfügung steht.



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CTX™ OPERATOR WORKSTATION (optional upgrade)

PRODUCTS OVERVIEW

CTX 9000 DSI™

CTX 5500 DS™

CTX 5500 DS™ SIMULATOR

CTX 2500™

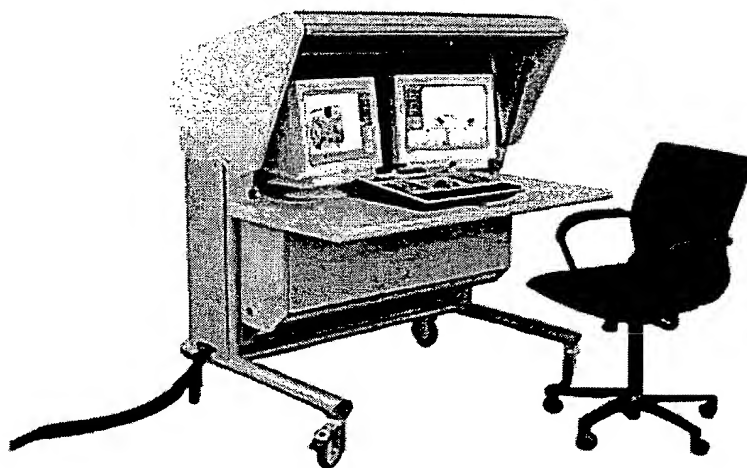
CTX™ OPERATOR WORKSTATION

QScan® QR 500

QScan® QR 160

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FILM SAFETY



InVision® designed the Secured CTX Operator Workstation as an optional upgrade for the entire family of CTX scanners. Durable and roomy compared to other workstation equipment carts, the new Secured CTX Operator Workstation serves as a desk and lockable storage for all CTX interface equipment.

Fabricated from heavy-gauge steel, the Secured CTX Operator Workstation is built for constant use in rigorous airport environments and deters theft and vandalism of CTX equipment. The workstation is equipped with wheels for easy transport.

The workstation's unique desktop enclosure creates privacy for operators in public lobbies, and its ergonomic design helps reduce operator strain during lengthy screening sessions. The new workstation secures and hides all equipment wiring, eliminating clutter and presenting a professional bag-screening station to the public.

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CTX 5500 DS™ SIMULATOR

PRODUCTS OVERVIEW

CTX 9000 DSI™

CTX 5500 DS™

CTX 5500 DS™ SIMULATOR

CTX 2500™

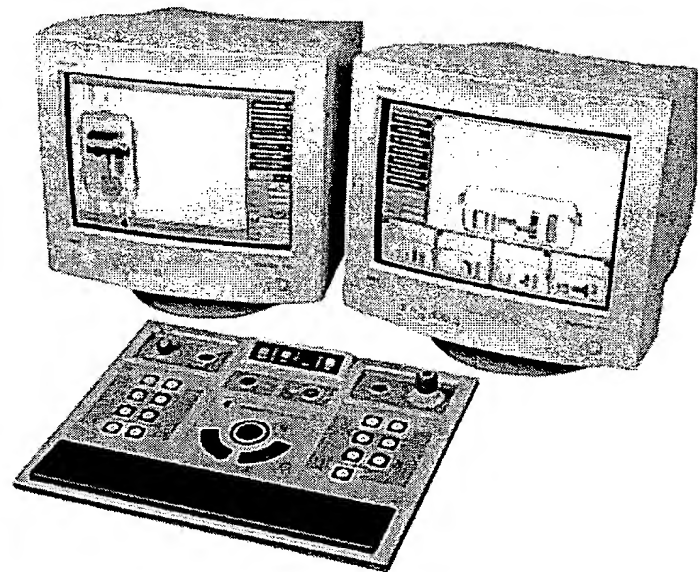
CTX™ OPERATOR WORKSTATION

QScan® QR 500

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Achieving threat resolution while deploying explosives detection systems (EDS) is a major concern for airport security. Thanks to years of operating and training experience, InVision's CTX 5500 DS Simulator allows for threat resolution training anytime, anywhere—without downtime to active EDS. The simulator is designed to train new operators as well as challenge and condition current operators without taking operational CTX system off-line.

The simulator features the same CTX 5500 DS database used for alarm resolution training. It imitates general CTX™ operation from a live console and prints reports after completing testing segments.

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Based on knowledge gained from over ten years of field operation, the CTX 5500 DS Simulator incorporates practical and innovative features to allow for hassle-free training.

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